IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.2.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO. 2156 OF 1997

The Assistant Executive Engineer
TWAD Board Urban Sub-Division
Military Lane,Samanathapuram
Tirunelveli, Now entrusted to
The Assistant Executive Engineer
TWAD Board
Maintenance Sub-Division,
Kovilpatti. .. Petitioner

Vs.

1. U.Esakki
2. S.Nagarajan
3. V.Murugesan
4. T.Pitchaiya
5. M.Subbaiya
6. I.Madasamy
7. L.Athinarayananan
8. G.Ramasamy
9. The Presiding Officer,
   Labour Court,
   Tirunelveli.

10. The Government of Tamil Nadu by
    Deputy Secretary to Government,
    Labour and Employment Department,
    Fort St. George,
    Chennai-9.

11. The District Collector
    Tirunelveli
    Nellai Kattabomman District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari as stated therein.

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For petitioner : Mrs. Sudarsana Sundar

For respondents: Ms.Velumani,
Addl. Govt. Pleader for R10&11

Dismissed against R2. by order dt.4.10.2004

No appearance for R1,3 to 8

9th respondent is the Labour Court.

O R D E R

The prayer in the writ petition is to issue a writ of certiorari to call for the records of the 10th respondent, passed in G.O.No.(D)448 dated 30.5.1996 in order to implement the award passed by the 9th respondent, the Labour Court, Tirunelveli, in C.P.No.139 of 1992 dated 18.7.1994 and to quash the same.

2. The case of the petitioner is that the respondents 1 to 8 were employed as Mazdoor category under the Nominal Muster Roll and were paid for the work attended by them; that they were engaged by the TWAD Board, whenever new schemes were initiated they could be terminated from service without giving prior notice; that the respondents 1 to 8 filed a claim petition before the 9th respondent, the Labour Court, Tirunelveli, stating that they had worked for 30 days in a month and that they were paid additional remuneration of 30% in total wages since 1978 and that since the petitioner had refused to pay such additional remuneration they are entitled for compensation and interest @ 12% for belated payment; that the learned Labour Judge passed an award dated 18.7.1994 made in C.P.No.139 of 1992 in favour of the respondents 1 to 8; that the respondents 1 to 8 had filed an application to recover the amount as awarded in C.P.No.139/92 dated 18.7.1994 which had been duly published in the Tamil Nadu Government Gazette under Labour and employment Department vide G.O.(D) No.448/Dt.30.5.1996 to recover the sum due under the Revenue Recovery Act; that the 11th respondent is initiating the proceeding under the Revenue Recovery Act to recover the sum as awarded in the said claim petition.

3. The further case of the petitioner is that the work which had been looked after by the Office of the Assistant Executive Engineer Urban Sub-Division, Tirunelveli was entrusted to the Office of the Assistant Executive Engineer, Maintenance Sub-Division, Kovilpatti during the month of May, 1995; that the 30% additional remuneration will be given only to the NMR workers who are working in rural areas; that since

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the respondents 1 to 8 were regularised through proceeding No.807/E2/92/dt.9.3.1995 with effects from the date of the completion of 2 years of service, i.e. respectively from 25.2.84, 25.2.84, 15.12.84, 2.12.84, 24.6.78 and 5.12.84 for a consolidated pay of Rs.1,000/- they are not entitled for 30% additional remuneration irrespective of the area they worked.

4. The further case of the petitioner is that as per clause 3 and clause 4 of the 12(3) settlement entered into between the petitioner management and the representatives of various unions before the Joint Commissioner of Labour (Conciliation) vide No.P2/348/96/Dt.8.8.1996, the workers who have been regularised in service have to forego the back wages and other benefits at the same time if the persons who have been regularised in service have been paid a consolidated pay of Rs.1,000/- if they have not been paid so, in such cases they are entitled for the arrears and hence, they are not entitled for the sum as claimed for. On such averments, the petitioner has come forward to file the above Writ Petition for the relief extracted supra.

5. Heard the learned counsel for the petitioner, the learned Government Advocate appearing on behalf of the respondents 10 and 11 with no representation for the respondents 1, 3 to 8 and the materials placed on record have also been perused.

6. During arguments, learned counsel for the petitioner would submit that the Labour Court has passed an award in favour of the respondents 1 to 8 based on the order of the Deputy Commissioner of Labour, Tirunelveli dated 25.8.1988, which is only a claim in respect of Rs.234/- claimed under Section 7(2) of the Payment of Wages Act for the period from October 1987 & November 1987 and that it has nothing to do with the claim of the respondents 1 to 8; that the claim of the respondents 1 to 8 is Rs.6,885/- each for a period of 3 years i.e. 1988, 1989 and 1990; that the facts and circumstances of the case referred to in the award and the case of the respondents 1 to 8 are totally different; that they filed a petition under Section 33(C)(2) of the I.D. Act, where an amount payable only is maintainable; that if at all the claim is made under Section 33(C)(2) of the Act, it should be payable; that there is nothing to show that this amount is payable; that since the petitioners are regularised, there is no question of additional remuneration as per the settlement entered into between the representatives of the respondents and the petitioner Management. On such arguments, would pray for quashing of the order of the 9th respondent and the subsequent order of the 10th respondent for implementing the said award.

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7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this is an application filed by the management TWAD Board, Tirunelveli Urban Sub-division, Kovilpatti-I, herein praying to quash the G.O. passed by the 10th Respondent Government of Tamilnadu, in G.O.No.(D) 448 dated 30.5.1996 in order to implement the award passed by the Presiding Officer, Labour Court, Tirunelveli 9th respondent in C.P.No.139 of 1992 dated 18.7.1994.

8. On the part of the petitioner/management they would allege that the Labour Court, stating that the respondents 1 to 8 have worked for 30 days in a month and they were paid additional remuneration of 30% in total wages since 1978, which they are entitled to with interest at 12% for belated payment and passed the award to that effect on 18.7.1994 in their favour and to execute the award and recover the amount under the Revenue Recovery Act, it has been published in Tamilnadu Government Gazette dated 30.5.1996. The petitioner's contention is that the respondents 1 to 8 are not entitled to 30% additional remuneration, since they were regularised on completion of 2 years of service and that in accordance with the settlement entered into between the petitioner/management and the representatives of the various Unions before the Joint Commissioner of Labour, the workers who have been regularised should forego the back wages and other benefits.

9. On the part of the respondents 1 to 8 it would be argued to the effect that the writ petition has been filed against the implementation of the award passed by the Labour Court, Tirunelveli dated 18.7.1994 passed through G.O.No.(D) 448 dated 30.5.1996; that the Labour Court passed the additional remuneration at 30% in favour of the claimants the respondents 1 to 8 since they are entitled to the same being the Non Muster Roll workers and they are entitled to additional remuneration during the relevant period; that at the later stage they might have been remunerated for the additional work done when they were Non Muster Roll workers, they were paid the additional remuneration at 30% in the total wages and therefore the award need not be quashed nor the G.O. passed by the 10th respondent towards the implementation of the award. A perusal of the award would clearly show that the claim of the respondents 1 to 8 has been upheld by the Deputy Commissioner of Labour dated 2.8.1991 under Exhibit P-2 marked therein showing their entitlement of the claim of 30% additional remuneration, that the Deputy Commissioner of Labour allowed the claim application. The appeal preferred by the petitioner management having come to be dismissed, the Labour Court,

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Tirunelveli having remarked that when similarly placed other employees are entitled to 30% of extra remuneration doing the same quantum of work, the respondents 1 to 8 are also equally entitled and on such observations would clearly allow the claim of the respondents 1 to 8, in which this Court is not able to find any inconsistency, infirmity or legal error or any other flaws affecting the award of the Labour Court and therefore it is only desirable not to cause its interference into the well considered and merited award passed by the Presiding Officer, Labour Court, Tirunelveli the 9th respondent herein in due consideration of the facts pleaded following the procedures established by law and in full appreciation of the evidence placed on record and hence the following order. The above writ petition is bereft of merit and is liable to be dismissed and is dismissed accordingly.

In result,

(i) The above writ petition does not merit acceptance for the foregoing reasons assigned and is dismissed accordingly.

(ii) The order passed by the 10th respondent in G.O. No.(D) 448, dated 30.5.1996 to implement the award passed by the 9th respondent in C.P.No.139 of 1992 dated 18.7.1994 are confirmed;

(iii) There shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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Copy to:

1. The Presiding Officer,
   Labour Court,
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2. The Deputy Secretary to Government,
The Government of Tamil Nadu
    Labour and Employment Department,
   Fort St. George,
   Chennai-9.

3. The District Collector
   Tirunelveli
   Nellai Kattabomman District.

+1cc to the Govt. Pleader Sr 4729

+1cc to Mr.S.Sudharshana Sundar, Advocate Sr 4548

RA (Co)
km/9.3.

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